



Control Number: 42935



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APPLICATION OF MANVILLE  
WATER SUPPLY CORPORATION  
AND LAKESIDE WATER CONTROL  
AND IMPROVEMENT DISTRICT 2D  
FOR APPROVAL OF A SERVICE  
AGREEMENT IN TRAVIS COUNTY  
(37796-C)

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PUBLIC UTILITY COMMISSION  
FILING CLERK  
PUBLIC UTILITY COMMISSION  
OF TEXAS

**LAKESIDE WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2D'S**  
**RESPONSE TO ORDER NO. 4**

COMES NOW Lakeside Water Control and Improvement District No. 2D (the "*District*"), by and through its undersigned attorneys of record, and files this Response to the Public Utility Commission ("*Commission*") Order No. 4 and would show the following:

**I. BACKGROUND**

On November 18, 2013, the District and Manville Water Supply Corporation ("*Manville WSC*") (District 2D and Manville WSC, collectively, are the "*Applicants*") filed an application ("*Application*") with the Texas Commission on Environmental Quality ("*TCEQ*") under Texas Water Code ("*TWC*") § 13.248 and 30 Texas Administrative Code § 291.117 to transfer a portion of Manville Water Supply Corporation's ("*Manville WSC*") water certificate of convenience and necessity ("*CCN*") No. 11144 to the District. TCEQ Staff requested additional information from the Applicants on February 14, 2014, which the District provided. TCEQ Staff deemed the application administratively complete on March 19, 2014. TCEQ Staff then performed a technical review of the application, evaluating the technical, managerial and financial capabilities of the District to serve the customers in this area.<sup>1</sup> On July 8, 2014, TCEQ Staff submitted a map showing the water CCN area to be transferred from Manville WSC to the

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<sup>1</sup> The District is already serving the customers in the proposed service area.

District and a certificate for the Applicants to review and provide their consent. On July 11, 2014, the District filed its written consent to the map with the TCEQ; and Manville WSC provided its consent to the map on July 14, 2014.

However, on September 1, 2014, before the Application could be scheduled for a public hearing of the Commissioners of the TCEQ for final approval, jurisdiction over water and sewer CCN matters transferred to the Commission. Next, on November 5, 2014, the Administrative Law Judge (“*ALJ*”) issued Order No. 2 requiring Commission Staff to file an update on the status of the proceeding, to file a recommendation on the need for a hearing or on final disposition of the application, or to propose a procedural schedule by December 15, 2014. On December 15, 2014, Commission Staff filed its Response to Order No. 2 and requested an extension of the response deadline, which the ALJ granted on December 18, 2014, under Order No. 3. Commission Staff filed its Response to Order No. 3 on January 23, 2015. The ALJ issued Order No. 4 on January 29, 2014, ordering the Applicants to file a response clarifying the full extent of the relief sought in this proceeding, and specifically to affirm or deny Commission Staff’s interpretation of the Application by February 23, 2015. This response is timely filed.

## **II. DISCUSSION**

The ALJ’s Order No. 4 directs the Applicants to address the following issues:

- 1) To file supplemental information clarifying the full extent of the relief sought in this proceeding;
- 2) To cite specific statutory authority of Commission rules supporting the relief sought;
- 3) To affirm or deny Commission Staff’s interpretation of the Application;
- 4) To address whether Manville WSC would still retain a service area and CCN if the application is approved;

- 5) To address whether any portion of Manville WSC's public water system ("*PWS*") would be affected by the Application and if the Applicants seek to transfer any portion of the PWS; and
- 6) To address whether consolidation of Docket Nos. 42931, 42932, 42933, 42934, and 42935 is appropriate.

The District has reviewed the brief of the Commission's Staff and Order No. 4, and it addresses each of these issues below:

*Issues 1-3*

The District agrees that the Application seeks (1) that only the portion of Manville WSC's water service area that overlaps with the jurisdictional boundaries of the District be transferred to the District; (2) that Manville WSC's water CCN be amended to reflect this transfer (remove such area from its water CCN boundaries); and (3) that the District obtain a new water CCN for the portion of service area transferred under the 1996 and 2013 Agreements (the removed area transfers to a water CCN granted to the District). However, as discussed in more detail below, the District contends that TWC § 13.248 and the corresponding TCEQ/Commission rules, not TWC § 13.301, applies to this Application.

As requested in the Application, the District seeks to transfer the portion of Manville WSC's Water CCN No. 11144 that overlaps with the District's jurisdictional boundaries (which is the area that the District is currently providing retail water service to its customers) to the District, as provided under TWC § 13.248 and 30 TAC § 291.117 (now PUC SUBST. R. 24.117). TWC § 13.248 provides:

Contracts between retail public utilities<sup>2</sup> *designating areas to be served and customers to be served*<sup>3</sup> by those retail public utilities, when approved by the utility commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity.

Section (a) of 30 TAC § 291.117 repeats the language of TWC § 13.248, but with one sentence added: “Nothing in this provision negates the requirements of Texas Water Code, § 13.301.”

Section (b) of 30 TAC § 291.117 lists the information to be provided with an application under TWC § 13.248. These items include (1) maps of the area to be transferred; (2) a copy of the executed contract or agreement; (3) if applicable, an affidavit that notice has been provided under TWC § 13.301; (4) the filing fee as prescribed by TWC § 5.701; and (5) any other information requested by the executive director.<sup>4</sup> The District complied with the filing requirements listed in 30 TAC § 291.117(b) as evidenced by the March 19, 2014 letter from TCEQ accepting the Application as complete, as well as the July 8, 2014 map provided by TCEQ Staff to the Applicants for approval by the Applicants.

The District agrees with Commission Staff that the District is requesting that a portion of Manville WSC’s CCN area be transferred to the District, which would be simply accomplished by amending Manville WSC’s CCN to remove the transferred area and to grant the District a water CCN that includes such transferred area. This transfer is consistent with TWC § 13.248 and 30 TAC § 291.117(a)/P.U.C. SUBST. R. 24.117, because Manville and the District have agreed by contract that the District would provide retail water service within its jurisdictional boundaries, that Manville WSC will merely provide a wholesale water supply to the District, and

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<sup>2</sup> A “retail public utility” is defined by TWC § 13.002(19) as any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

<sup>3</sup> Emphasis added.

<sup>4</sup> The PUC adopted the equivalent rule as P.U.C. SUBST. R. 24.117, but the filing fee requirement in 30 TAC § 291.117(b)(4) was removed, and the words “executive director” were replaced by “commission.”

that, upon request from the District, the water CCN should be transferred from Manville WSC to the District. This Application is the product of the District (as an assignee of the developer under the 1996 and 2013 Agreements) making such water CCN transfer request.

Accordingly, the District contends that the Application is not subject to TWC § 13.301.<sup>5</sup> While TWC § 13.301 can apply to some applicants requesting approval of an agreement under TWC § 13.248, TWC § 13.301 only applies in instances where a utility or water supply corporation is selling, acquiring, or leasing a water or sewer *system* that is required by law to possess a CCN or merging with a utility or water supply corporation that is required by law to possess a CCN. Further, Title 30 TAC § 291.117(b)(3)/PUC SUBST. R. 24.117(b)(3) indicates that TWC § 13.301 only applies in some cases, stating that an applicant may be required to provide proof that “an affidavit that notice has been provided under TWC § 13.301, *if applicable*.” In both the TCEQ and PUC rules, the words “if applicable” make it clear that TWC § 13.301 does not apply in all instances where an application is submitted under TWC § 13.248. Additionally, the Background and Summary of the Factual Basis for the Adopted Rules section contained in the Texas Register from December 30, 2005, which amended 30 TAC § 291.117 amongst other rules in 30 TAC Ch. 291, further supports the District’s contention that TWC § 13.301 does not apply to the Application.<sup>6</sup> In this 2005 rulemaking project, 30 TAC § 291.117

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<sup>5</sup> TWC § 13.301(a) provides: “A utility or a water supply or sewer service corporation, on or before the 120th day before the effective date of a sale, acquisition, lease, or rental of a water or sewer system that is required by law to possess a certificate of public convenience and necessity or the effective date of a merger or consolidation with such a utility or water supply or sewer service corporation, shall: (1) file a written application with the utility commission; and (2) unless public notice is waived by the utility commission for good cause shown, give public notice of the action.”

<sup>6</sup> 30 Tex Reg 8958-8979, 8958 (Dec. 2005)

was amended to address the § 13.301 notice requirement issue,<sup>7</sup> and in the Executive Director's response to public comments regarding the proposed rule change, TCEQ Staff stated:

The amendment to § 291.117 clarifies that *in some cases*<sup>8</sup> a separate STM<sup>9</sup> application is appropriate and TWC, § 13.248 does not negate that fact. The commission added the last sentence to subsection (a) to ensure that a retail public utility is aware that *in some cases*<sup>10</sup> TWC, § 13.301 also applies and the retail public utility is still responsible for completing an STM application.<sup>11</sup>

This explanation makes it clear that the TCEQ in adopting the amendments to 30 TAC § 291.117 did not intend to make TWC § 13.301 apply to all applications under TWC § 13.248.

Here, Manville WSC has no retail customers and does not own any water distribution facilities in the proposed CCN transfer area, as the District owns such facilities and has been providing retail water service to its customers located in the transfer area for many years. In other words, the Applicants do not intend for any part of Manville WSC's water *system or customers* to be transferred to the District. Rather, the Applicants request only that the Commission approve an agreement regarding a transfer of water CCN service area, as agreed by Manville WSC and the District.

Therefore, the Application should be processed under TWC § 13.248 and 30 TAC § 291.117/PUC SUBST. R. 24.117.

#### ***Item 4***

In Order No. 4, the ALJ requests the Applicants to clarify whether Manville WSC would still retain a service area and its CCN if the applications in Docket Nos. 42931, 42932, 42933, 42934, and 42935 are ultimately approved. The answer is yes. Manville WSC would retain its

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<sup>7</sup> *Id.* at 8959 and 8976.

<sup>8</sup> Emphasis added.

<sup>9</sup> STM stands for "Sale, Transfer, Merger," which is the subject of a TWC § 13.301 application.

<sup>10</sup> Emphasis added.

<sup>11</sup> 30 Tex Reg 8958-8979, 8976 (Dec. 2005).

entire water CCN area, save and except for the areas transferred by the applications in Docket Nos. 42931, 42932, 42933, 42934, and 42935.

***Item 5***

In Order No. 4, the ALJ requests the Applicants to clarify whether any part of Manville WSC's public water system ("***PWS***") is affected by the Application and whether any portion of the service area that the Applicants seek to transfer contain facilities that are part of Manville WSC's PWS. The answer to both of these questions is no. As explained above under Items 1-3, Manville WSC does not own any water distribution infrastructure in the service area to be transferred and it will not be transferring any part of its PWS to the District. Rather, the District is already the owner of the PWS that serves the customers in the proposed water CCN transfer area.

***Item 6***

In Order No. 4, the ALJ asks if consolidation of Docket Nos. 42931, 42932, 42933, 42934, and 42935 is appropriate. The District believes that consolidation would be appropriate for administrative and cost efficiency. Each of these 5 matters contemplate a transfer of water CCN area from Manville WSC to the respective District. It is the District's understanding that none of these 5 matters contemplate a transfer of customers or facilities. The District supports consolidation of these docket numbers to save the parties time and expense.

**III. CONCLUSION**

The District's Application has met the applicable statutory and regulatory requirements, which should be limited to TWC § 13.248 and 30 TAC § 291.117/PUC SUBST. R. 24.117, but not TWC § 13.301. The District respectfully requests that the Commission approve the Application by transferring the portion of Manville WSC's water CCN No. 11144 that overlaps



with the District's boundaries to the District. The District believes that approval of this CCN transfer agreed by contract entails (1) amending Manville WSC's water CCN No. 11144 to remove the service area to be transferred; and (2) granting the District a water CCN containing its currently existing jurisdictional boundaries/current service area.

The District notes that the Application was filed more than a year ago and was deemed administratively complete about one year ago. TCEQ Staff performed a technical, managerial and financial analysis on the District and determined that the District could provide continuous and adequate service to customers within the service area to be transferred. The District had complied with the requests of TCEQ Staff, and the Application appeared on the verge of being approved, as evidenced by the map and certificate provided to the Applicants by TCEQ Staff on July 8, 2014. Unfortunately, the process was interrupted by the transfer of jurisdiction, and the PUC is now managing an application in process.

Thus, in the alternative, if the Commission does not agree with District's interpretation of the applicable statutes and rules, or determines that additional action or information is required, then the District respectfully requests that it be allowed to amend its Application accordingly and not require the Applicants to restart this process.

Respectfully submitted,

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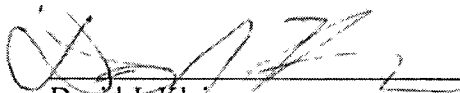
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ATTORNEYS FOR LAKESIDE WATER  
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NO. 2D

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was transmitted by fax, hand-delivery and/or regular, first class mail on this 23rd day of February, 2015 to the parties of record.

  
David J. Klein